

CV 08

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEVEN WEISS,

Plaintiff,

v.

FOCUS RECEIVABLES MANAGEMENT, LLC,

Defendant.

DEARIE, CH. J.

No.

REYES, M.J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 11 2008 ★

BROOKLYN OFFICE

JURY DEMANDED

**COMPLAINT FOR VIOLATIONS OF THE
FAIR DEBT COLLECTION PRACTICES ACT**

1. Plaintiff Steven Weiss files this complaint against Defendant Focus Receivables Management, LLC for its unfair, deceptive and illegal debt collection activities in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692, *et seq.*

Parties

1. Plaintiff Steven Weiss is a citizen of the State of New York who resides within this district.

2. Weiss is a "consumer" as that term is defined by §1692a(3) of the FDCPA, in that the alleged debt that Defendant Focus Receivables Management, LLC sought to collect from him is a consumer debt, incurred by Weiss for personal purposes and purportedly owed to "Worldwide Asset Purchasing II, LLC."

3. Defendant Focus Receivables Management, LLC is a debt-collection company with a principal place of business located in Marietta, Georgia.

4. Focus is regularly engaged, for profit, in the collection of debts allegedly owed by consumers. Focus is a "debt collector" as that term is defined by §1692a(6) of the FDCPA.

5. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.

6. That all references in this complaint to Focus shall mean Focus or an employee or employees of Focus.

Jurisdiction and Venue

7. This Court has federal question jurisdiction under 15 U.S.C. §1692k(d) and 28 U.S.C. §1331.

8. Venue is proper under 28 U.S.C. §1391b, as the acts and transactions that give rise to this action occurred, in substantial part, in this district.

Factual Allegations

9. On or about June 5, 2007, Defendant Focus sent an initial letter to Weiss, a copy of which is attached as Exhibit A, in an attempt to collect a consumer debt allegedly due to “Worldwide Asset Purchasing II, LLC.”

10. By letter sent by certified mail, return receipt requested, Weiss disputed the debt and demanded verification (the “Dispute Letter”). A copy of Weiss’s Dispute Letter is attached as Exhibit B.

11. Defendant received Weiss’s Dispute Letter on June 18, 2007, within the 30-day validation set by the June 5, 2007 letter. A photocopy of the signed and dated return receipt is attached as Exhibit C.

12. To date, Weiss has not received verification of the debt.

13. Thereafter, Defendant made several telephone calls to Plaintiff which were each a “communication” in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

14. On or about July 25, 2007, an agent of Defendant Focus telephoned Weiss and left a voicemail message.

15. The message stated:

Steven, I need you to contact my office, 1-888-379-9266, my direct extension is 2014.

16. This message left by the Defendant did not meaningfully identify the caller.

17. Defendant failed to disclose Defendant's identity and the nature of Defendant's business in its voicemail messages, in violation of 15 U.S.C. § 1692d(6)

18. The message left by the Defendant on Plaintiff's answering machine did not give the notice required by 15 USC § 1692e(11).

19. Plaintiff listened to the message left by Defendant.

20. On another occasion, on or about July 30, 2007, an agent of Defendant Focus telephoned Weiss and left a voicemail message.

21. This message stated:

Steven Weiss, this is Ms. Miles and I need for you to contact my office at 1-888-379-9266. My direct extension is 2014. Thank you.

22. This message left by Defendant did not meaningfully identify the caller.

23. Defendant failed to disclose Defendant's identity and the nature of Defendant's business in its voicemail messages, in violation of 15 U.S.C. § 1692d(6)

24. The message left by the Defendant on Plaintiff's answering machine did not give the notice required by 15 USC 1692e(11).

25. Plaintiff listened to the message left by Defendant.

COUNT I
Violations of the Fair Debt Collection Practices Act

26. Plaintiff hereby restates, realleges, and incorporates herein by reference paragraphs 1-22 as if set forth fully in this Count.

27. Section 1692g(b) of the FDCPA states as follows:

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

28. By letter received by Defendant on June 18, 2007, within the thirty-day validation period, Weiss disputed the debt and demanded verification.

29. Under §1692g(b), all debt collection activity should have ceased until Defendant Focus mailed written verification of the debt to Weiss.

30. By making two debt-collection calls to Weiss without first providing written verification of the alleged debt, Defendant violated FDCPA §1692g(b).

31. Section 1692d of the FDCPA states as follows:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

...

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

32. Defendant failed to disclose Defendant's identity and the nature of Defendant's business, in violation of 15 U.S.C. §§ 1692d and d(6).

33. Section 1692e of the FDCPA states as follows:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

...

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

34. The Defendant, by leaving multiple voicemail messages for the Plaintiff, without properly identifying that the communication is from a debt collector, violated FDCPA §§1692e.

35. Defendant is liable to Weiss under the FDCPA.

WHEREFORE, Plaintiff Steven Weiss respectfully requests that this Court grant the following relief in her favor and against Defendant Focus Receivables Management, LLC:

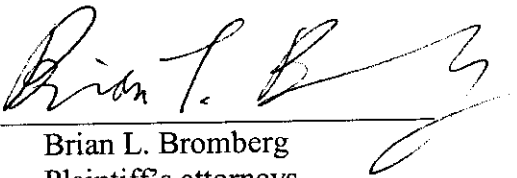
- A. A declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Statutory damages as provided by Section 1692k of the FDCPA;
- C. Attorneys' fees, litigation expenses, and costs; and
- D. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands trial by jury.

Dated: New York, New York
March 5, 2008

RESPECTFULLY SUBMITTED,
BROMBERG LAW OFFICE, P.C.

By: 
Brian L. Bromberg
Plaintiff's attorneys

Attorneys for Plaintiff:
Brian Bromberg
Bromberg Law Office, P.C.
40 Exchange Place, Suite 2010
New York, NY 10005
(212) 248-7906

Exhibit A

1130 North Chase Parkway, Suite 150
Marietta, GA 30067

Date: 06/05/07

Toll-Free: 888-379-9266

Steven J Weiss
295 Ocean Pkwy Apt F8
Brooklyn, NY 11218-4128Regarding: WORLDWIDE ASSET PURCHASING II, LLC
Account #: 5458000511929909
Current Balance: \$1,744.78

Dear Steven J Weiss:

Please be advised that the above claim has been placed with us for collection by WORLDWIDE ASSET PURCHASING II, LLC, which has acquired a Metris portfolio, and as such, my agency is handling the collection of your Metris debt.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days of receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Sincerely,

Focus Receivables Management, LLC

Please see reverse side for important information and enclosed privacy notice.

DETACH AND RETURN WITH PAYMENT

P.O. Box 1976
Southgate, MI 48195-0976WORLDWIDE ASSET PURCHASING II, LLC
Account #: 5458000511929909
File #: 7718614
Current Balance: \$1,744.78

Amount Enclosed
\$

7718614/00051 212 23279228 0004082/0016

Steven J Weiss
295 Ocean Pkwy Apt F8
Brooklyn, NY 11218-4128Focus Receivables Management LLC
P.O. Box 725069
Atlanta, GA 31139-2069

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

We are required under certain state laws to notify consumers of the following rights. This list does not include a complete list of rights consumers have under state and federal laws.

In California: "The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgement. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov."

In Colorado: FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAN.CFM.

In Massachusetts: If you have been contacted at your place of employment, you are entitled to the following notice:

Notice of Important Rights:

You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral requests will be valid for only ten (10) days unless you provide written confirmation of the request postmarked or delivered within seven (7) days of such request. You may terminate this request by writing to the collection agency.

15 Union Street, Lawrence, Massachusetts 01840

Office hours: Mon-Thurs: 8AM-8PM, Fri: 8AM-5PM, Sat: 8AM-12PM

In Maine: Please be advised that if you wish to contact our office, our office hours are 8AM-9PM, Mon-Thurs. Friday, 8AM-6PM, and Saturday 8AM-Noon. Our toll free numbers are 1-877-362-8766 or 1-877-623-6287. If you wish to contact us via mail, you can write to us at:

Focus Receivables Management, LLC

P.O. Box 725069

1130 Northchase Parkway, Suite 150

Marietta, Georgia 30067

In Tennessee: This collection agency is licensed by the Collection Service Board, State Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243.

In North Carolina: Our North Carolina Permit Numbers are 3580 and 4071.

In New York City: Department of Consumer Affairs licensee numbers are 1194149 and 1194175.

In Minnesota: This collection agency is licensed by the Minnesota Department of Commerce.

NOTE CHANGES ONLY

FIRST NAME

MI

LAST NAME

ADDRESS

CITY

HOME PHONE --

STATE

ZIP -

WORK PHONE --

WORLDWIDE ASSET PURCHASING, LLC PRIVACY NOTICE - This notice is being forwarded to you in compliance with the Gramm-Leach-Bliley Privacy Act. This notice has no reflection or bearing upon the status of your account.

The privacy and security of your personal information is important to us. This notice will inform you about our policies and procedures concerning the personal information about you that we obtain, maintain and disclose in connection with the account(s) of yours that we own or owned. Worldwide Asset Purchasing, LLC collects nonpublic personal information about you that is obtained from one or more of the following sources:

1. Information we received from companies that sold us your account(s) (for example, applications, contracts, checks and other related forms or documents regarding your dealings with your original creditor);
2. Information about your transactions with our affiliates, including West Asset Management, Inc., or others; and
3. Information from skip tracing companies or consumer reporting agencies.

INFORMATION WE MAY SHARE WITH OUR AFFILIATES - We may share identification (such as name and address), information about our transactions and experiences with you (such as payment history), and information that does not identify you, with our affiliates. By sharing this information, we are better able to service your accounts.

INFORMATION WE MAY SHARE WITH NONAFFILIATED COMPANIES - We share all of the information we collect about you, as described above, with nonaffiliated companies, as permitted by law, to assist in the servicing of your account(s). For example, we:

1. May share information about you with companies that we use to perform account servicing functions to manage and maintain your account and to process transactions that you have authorized, such as West Asset Management, Inc.; and
2. May report information about you to consumer reporting agencies, government agencies in response to a subpoena, or others in connection with investigations. (For example, if your account is closed as a result of a payment, settlement or otherwise, we report this to consumer reporting agencies.)

Because we respect your privacy, we do not sell, trade or otherwise disclose your identity or any other personal information about you to third parties for their marketing purposes.

CONFIDENTIALITY AND SECURITY OF YOUR ACCOUNT - We restrict access to nonpublic personal information about you to only those employees who need to know such information, and third party service providers who provide support services to us. We maintain physical, electronic and procedural safeguards to protect your personal information. If we use other companies to provide services for us, we require them to keep the information we share with them safe and secure and we do not allow them to use or share the information for any purpose other than the job they are hired to do.

FURTHER INFORMATION: For additional information concerning our privacy policy, you may write to us at: Worldwide Asset Purchasing, LLC, Attn: GLB Department, P.O. Box 379041, Las Vegas, NV 89137.

Exhibit B

1130 Northlake Parkway, Suite 150
Marietta, GA 30067

To Whom It May Concern,

I recieved a letter dated 6/5/07 (copy enclosed)
claiming a debt of \$1,744.78

- I dispute this debt
- please validate & list all details that lead to the calculation & sum of this amount
- please provide details & documentation of the reason & right of Focus receivables to contact me regarding this matter

Thank you,

Steven Weiss

Steven Wein

- 1) sent by certified mail, return receipt requested
- 2) 1st class mail - certificate of mailing

Exhibit C

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Focus Receivables Management
1130 Northchase Parkway
Suite 150
Marietta, GA 30067

2. Article Number

(Transfer from service label)

7007 0220 0001 9243 9453

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Jeanne Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name)

Jeanne Fields

C. Date of Delivery

6/18/07

D. Is delivery address different from item 1?

If YES, enter delivery address below: ☐ Yes ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL. DOES NOT PROVIDE FOR INSURANCE-POSTMASTER			
Received From:		Mr. Steven We 295 Ocean Pkwy Apt. #8 Brooklyn, NY 11218	
One piece of ordinary mail addressed to:			
Focus Receivables Management 1130 Northchase Parkway #150 Marietta, GA 30067			

PS Form 3817, January 2001



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U.S. POSTAGE
PAID
NEW YORK, NY
JUN 12 2007
RMDUNT
\$1.05
00020907-18

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

MARIETTA GA 30067

OFFICIAL USE

Postage	\$	\$0.41
Certified Fee		\$2.65
Return Receipt Fee (Endorsement Required)		\$2.15
Restricted Delivery Fee (Endorsement Required)		\$0.00
Total Postage & Fees	\$	\$5.21

Sent To: Focus Receivables Management
 Street, Apt. No., or PO Box No.: 1130 Northchase Parkway Suite 150
 City, State, ZIP+4: Marietta, GA 30067

PS Form 3800, August 2005

See Reverse for Instructions

E546 9453 7000 0220 2007